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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,224	02/22/2005	Firmin Garcia	Q86091	5613
23373 7590 09/10/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
NGO, LIEN M				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
09/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/525,224

**Applicant(s)**

GARCIA ET AL.

**Examiner**

LIEN TM NGO

**Art Unit**

3754

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-10 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-8 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knickerbocker (4,252,507).

Knickerbocker discloses, in figs.1, a fluid dispenser comprising a fluid reservoir and dispenser member comprising a body 49 defining a chamber; an actuator rod 22; a peripheral bearing collar including a gasket (G) coming into abutment at least indirectly against an edge of an opening of the fluid reservoir; wherein the axial height between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height between the bottom face of the collar and the bottom of the body and substantially equal to the axial height of a neck of the reservoir; a dispensing head 16 mounted on the top of the rod.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the height and diameter of claimed components of the fluid dispenser of Knickerbocker as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering of the optimum or workable ranges or values involves only routine skill in the art. In re Aller, 105 USPQ 233.

3. Claims 1, 2, 9, 10 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia et al. (6,398,079) in view of Knickerbocker (4,252,507).

Garcia et al. disclose, in fig.1, a fluid dispenser comprising a fluid reservoir and dispenser member comprising a body 14 defining a chamber; an actuator rod 46; a peripheral bearing collar 511 including a gasket coming into abutment at least indirectly against an edge of an opening of the fluid reservoir; wherein the axial height between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height between the bottom face of the collar and the bottom of the body; a dispensing head 4 mounted on the top of the rod; a cover hoop 5; and a piston 48 sliding in a top section disposed entirely outside of the neck of the reservoir.

Garcia does not disclose the neck of the reservoir having an axial height being equal to the axial height between the bottom face of the collar and the top end of the actuator rod, and the axial height between the bottom face of the collar and the bottom of the body.

Knickerbocker teaches disclose a neck of a reservoir having an axial height being equal to the axial height between a bottom face of a collar and a top end of the actuator rod, and a axial height between the bottom face of the collar and the bottom of the body.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dispenser member of Garcia to use with a fluid reservoir having a neck comprising an axial height as claimed, in

view teaching of Knickerbocker, in order to facilitate pumping the fluid dispenser by grappling on the portion of the neck or the reservoir.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 2, 4-10 and 14-23 have been considered but are moot in view of the new ground(s) of rejection.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KEVIN SHAVER can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LIEN TM NGO/

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Primary Examiner, Art Unit 3754

September 9, 2008